

AMENDED IN ASSEMBLY APRIL 14, 2011

AMENDED IN ASSEMBLY MARCH 15, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 152

Introduced by Assembly Member Fuentes

January 18, 2011

An act to add Section 131057.5 to the Health and Safety Code, to add *and repeal* Sections 17053.88 and 23688-~~to~~ of the Revenue and Taxation Code, and to add Chapter 14.5 (commencing with Section 18995) to Part 6 of Division 9 of the Welfare and Institutions Code, relating to food banks.

LEGISLATIVE COUNSEL'S DIGEST

AB 152, as amended, Fuentes. Food banks: grants: voluntary contributions: income tax credits.

(1) Existing law establishes the scope of functions and responsibilities of the State Department of Public Health.

This bill would additionally require the State Department of Public Health to investigate and apply for federal funding opportunities regarding promoting healthy eating and preventing obesity, as specified, and, upon receipt of that funding, allow the department to award grants and provide in-kind support to *support local assistance to local governments and* nonprofit organizations that encourage specified healthy eating programs, as provided.

(2) Existing federal law, the Emergency Food Assistance Program, is administered by the State Department of Social Services to provide agricultural commodities to eligible households and recipient agencies for distribution, as prescribed.

This bill would require the State Department of Social Services, on and after January 1, 2012, to establish and administer the State Emergency Food Assistance Program (SEFAP), to provide emergency food and funding for the provision of emergency food, as provided. This bill would create the State Emergency Food Assistance Program Account and would, upon appropriation by the Legislature, allocate the moneys in the account to SEFAP and require that *those moneys* be used for the purchase, storage, and transportation of food grown or produced in California.

(3) The Personal Income Tax Law and the Corporation Tax Law authorize various credits against the taxes imposed by those laws.

This bill would, under both laws, for taxable years beginning on or after January 1, 2012, *and before January 1, 2017*, allow a credit *for qualified taxpayers, as defined*, in an amount equal to 10% of the cost to be included in inventory costs, as specified, with respect to the donation of fresh fruits or *fresh* vegetables to food banks located in California.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) On December 16, 2010, the State Board of Food and
4 Agriculture released the strategic plan for the future of the state's
5 agriculture and food system entitled "California Agricultural
6 Vision: Strategies for Sustainability," which defines 12 key
7 strategies for California's agriculture and food sector, including a
8 strategy to improve access to safe, healthy food for all Californians
9 in order to reduce hunger and malnutrition, chronic diseases, and
10 health care costs associated with poor diets, and expand markets
11 for fruits, vegetables, grains, dairy, and meat grown and produced
12 in California.

13 (b) On December 3, 2010, the California Strategic Growth
14 Council accepted the first report of the Health in All Policies Task
15 Force, established by Executive Order S-04-10 of Governor Arnold
16 Schwarzenegger on February 23, 2010, which includes a goal that
17 every California resident has access to healthy, affordable food at
18 school, at work, and in his or her neighborhood.

1 (c) California has some of the most productive farmlands in the
2 world. California's farmlands produce more than 350 commodities,
3 specialty crops, and other food items. These farmlands are essential
4 for providing a healthy food supply and guarantee a natural
5 resource for California's future generations.

6 (d) According to a University of California at Los Angeles
7 survey of Californians' health status, despite the state's agricultural
8 abundance, more than 8 million people live in a household where
9 an adult cannot always afford enough food.

10 (e) Californians who experience hunger and food insecurity
11 suffer from poor physical and emotional health, as well as a
12 diminished capacity to learn and succeed in the workplace.

13 (f) Access to healthy food is a basic human right. Low
14 consumption and lack of access to healthy, affordable food may
15 result in higher levels of obesity and other diet-related diseases.

16 (g) One in every nine California children, one in three teens,
17 and over half of adults are overweight or obese. The obesity
18 epidemic affects virtually all age, income, educational, ethnic, and
19 disability groups in California, and rates are highest among
20 Californians of Latino, American-Indian, African American, and
21 Pacific Islander descent, Californians from lower income
22 households, and those with disabilities. More than 30 percent of
23 low-income California children and teens are overweight or obese.

24 (h) The growing epidemic of overweight individuals is due to
25 poor diet and physical inactivity, putting growing numbers of
26 Californians at risk for type 2 diabetes, hypertension, heart disease,
27 stroke, and cancer. Increased risk of chronic disease has been
28 attributed to low fruit and vegetable intake in the United States,
29 accounting for \$30 billion in associated health care costs in 2008
30 and 2009.

31 (i) According to the federal Centers for Disease Control and
32 Prevention, in 2009 less than 20 percent of young people and 23
33 percent of all American adults reported consuming the minimum
34 goal of five servings of fruits and vegetables each day.

35 (j) In California, partnerships between private and public entities,
36 among state and local government, local and regional businesses,
37 nonprofit organizations, health care institutions, food banks, and
38 other emergency food providers have helped to establish
39 community programs to combat obesity and related diseases,
40 increase access to healthy food, promote healthy eating, increase

1 consumption of fruits and vegetables, and encourage physical
2 activity.

3 (k) It is in the interest of the state to support programs that
4 promote increased access to healthy food and increased
5 consumption of California-grown fresh fruits and vegetables, whole
6 grains, and low-fat dairy in order to improve child and adult
7 nutrition, promote a strong, healthy workforce, and strengthen
8 local and regional farm economies.

9 (l) With the significant fiscal challenges in California, it is
10 further in the interest of the state to maximize the availability of
11 federal funding in California in order to support programs and
12 activities that prevent obesity and hunger and increase access to
13 healthy food and consumption of healthy food.

14 (m) It is further in the interest of the state to encourage and
15 facilitate partnerships between public and private entities to
16 promote a comprehensive approach to nutrition and wellness,
17 including activities that reduce obesity and related diseases,
18 encourage physical activity, and provide nutrition education in
19 order to ensure that all Californians have access to healthy food
20 and can choose a healthy diet.

21 SEC. 2. Section 131057.5 is added to the Health and Safety
22 Code, to read:

23 131057.5. (a) The State Department of Public Health shall
24 investigate and apply for federal funding opportunities regarding
25 promoting healthy eating and preventing obesity, including those
26 available under the Food, Conservation, and Energy Act of 2008
27 (Public Law 110-234), the American Recovery and Reinvestment
28 Act of 2009 (Public Law 111-5), the federal Patient Protection and
29 Affordable Care Act (Public Law 111-148), and the Healthy,
30 Hunger-Free Kids Act of 2010 (Public Law 111-296).

31 (b) Upon receipt of federal funding regarding promoting healthy
32 eating and preventing obesity, the State Department of Public
33 Health may, in its sole discretion, *provide in-kind support and*
34 ~~award grants and provide in-kind support~~ *to support local*
35 ~~assistance to local governments and nonprofit organizations that~~
36 the department deems eligible to encourage the sale and
37 consumption of fresh fruits and vegetables, implement programs
38 and initiatives that prevent obesity and hunger, and promote healthy
39 eating and access to nutritious food in underserved and urban and
40 rural communities. The award of these grants shall be exempt from

1 the State Contract Act (Part 2 (commencing with Section 10100))
2 of Division 2 of the Public Contract Code.

3 SEC. 3. Section 17053.88 is added to the Revenue and Taxation
4 Code, to read:

5 17053.88. (a) In the case of a *qualified* taxpayer who donates
6 fresh fruits or *fresh* vegetables to a food bank located in California
7 under Chapter 5 (commencing with Section 58501) of Part 1 of
8 Division 21 of the Food and Agricultural Code, for taxable years
9 beginning on or after January 1, 2012, *and before January 1, 2017*,
10 there shall be allowed as a credit against the “net tax” (as defined
11 by Section 17039), an amount equal to 10 percent of the cost
12 included in inventory costs under Section 263A of the Internal
13 Revenue Code, or that would be required to be included in
14 inventory costs under Section 263A of the Internal Revenue Code
15 but for the exception for farming businesses contained in Section
16 263A(d) of the Internal Revenue Code, with respect to those fresh
17 fruits or *fresh* vegetables.

18 ~~(b) A married couple or domestic partners may receive only~~
19 ~~one credit under this section. If the spouses or domestic partners~~
20 ~~file separate returns, the credit may be taken by either or equally~~
21 ~~divided between them. With the exception of spouses or domestic~~
22 ~~partners, if two or more taxpayers share in the expenses eligible~~
23 ~~for the credit provided by this section, each taxpayer shall be~~
24 ~~eligible to receive the tax credit in proportion to his or her~~
25 ~~respective share of the expense paid or incurred. In the case of a~~
26 ~~partnership, the tax credit may be divided between the partners~~
27 ~~pursuant to a written partnership agreement in accordance with~~
28 ~~Chapter 10 (commencing with Section 17851), which includes~~
29 ~~Section 704 of the Internal Revenue Code concerning substantial~~
30 ~~economic effect, relating to a partner’s distributive share.~~

31 (b) *For purposes of this section, “qualified taxpayer” means*
32 *the person responsible for planting a crop, managing the crop,*
33 *and harvesting the crop from land.*

34 (c) If the credit allowed by this section is claimed by the
35 taxpayer, any deduction otherwise allowed under this part for that
36 amount of the cost paid or incurred by the taxpayer that is eligible
37 for the credit shall be reduced by the amount of the credit provided
38 in subdivision (a).

39 (d) Upon receipt of the donated fresh fruits or *fresh* vegetables,
40 the nonprofit organization shall provide a certificate to the donor.

1 The certificate shall contain a statement signed and dated by a
2 person authorized by that organization that the product is donated
3 under Chapter 5 (commencing with Section 58501) of Part 1 of
4 Division 21 of the Food and Agricultural Code. The certificate
5 shall also contain the type and quantity of product donated, the
6 name of donor or donors, and the name and address of the donee.
7 Upon the request of the Franchise Tax Board, the taxpayer shall
8 provide a copy of the certification to the Franchise Tax Board.

9 (e) In the case where the credit allowed by this section exceeds
10 the “net tax,” the excess may be carried over to reduce the “net
11 tax” in the following year, and for the six succeeding years if
12 necessary, until the credit has been exhausted.

13 (f) To the extent that data are available, the Franchise Tax Board
14 shall report ~~annually~~ to the Legislature *on or before December 1,*
15 *2014, and each December 1 thereafter until the operative date*
16 *specified in subdivision (g),* regarding the utilization of the credit
17 authorized by this section.

18 (g) (1) A report to be submitted pursuant to subdivision (f) shall
19 be submitted in compliance with Section 9795 of the Government
20 Code.

21 (2) The requirement for submitting a report imposed under
22 subdivision (f) is inoperative on January 1, 2016, pursuant to
23 Section 10231.5 of the Government Code.

24 (h) *This section shall remain in effect only until December 1,*
25 *2017, and as of that date is repealed. However, any unused credit*
26 *may continue to be carried forward, as provided in subdivision*
27 *(e).*

28 SEC. 4. Section 23688 is added to the Revenue and Taxation
29 Code, to read:

30 23688. (a) In the case of a *qualified* taxpayer who donates
31 fresh fruits or *fresh* vegetables to a food bank located in California
32 under Chapter 5 (commencing with Section 58501) of Part 1 of
33 Division 21 of the Food and Agricultural Code, for taxable years
34 beginning on or after January 1, 2012, *and before January 1, 2017,*
35 there shall be allowed as a credit against the “tax” (as defined by
36 Section 23036), an amount equal to 10 percent of the cost included
37 in inventory costs under Section 263A of the Internal Revenue
38 Code, or that would be required to be included in inventory costs
39 under Section 263A of the Internal Revenue Code, but for the
40 exception for farming businesses contained in Section 263A(d) of

1 the Internal Revenue Code, with respect to those fresh fruits or
2 *fresh* vegetables.

3 ~~(b) If two or more taxpayers share in the expenses eligible for~~
4 ~~the credit provided by this section, each taxpayer shall be eligible~~
5 ~~to receive the tax credit in proportion to its respective share of the~~
6 ~~expense paid or incurred. In the case of a partnership, the tax credit~~
7 ~~may be divided between the partners pursuant to a written~~
8 ~~partnership agreement in accordance with Chapter 10 (commencing~~
9 ~~with Section 17851), which includes Section 704 of the Internal~~
10 ~~Revenue Code concerning substantial economic effect, relating to~~
11 ~~a partner's distributive share.~~

12 (b) *For purposes of this section, "qualified taxpayer" means*
13 *the person responsible for planting a crop, managing the crop,*
14 *and harvesting the crop from land.*

15 (c) If the credit allowed by this section is claimed by the
16 taxpayer, any deduction otherwise allowed under this part for that
17 amount of the cost paid or incurred by the taxpayer that is eligible
18 for the credit shall be reduced by the amount of the credit provided
19 in subdivision (a).

20 (d) Upon receipt of the donated fresh fruits or *fresh* vegetables,
21 the nonprofit organization shall provide a certificate to the donor.
22 The certificate shall contain a statement signed and dated by a
23 person authorized by that organization that the product is donated
24 under Chapter 5 (commencing with Section 58501) of Part 1 of
25 Division 21 of the Food and Agriculture Code. The certificate shall
26 also contain the type and quantity of product donated, the name
27 of donor or donors, and the name and address of the donee. Upon
28 the request of the Franchise Tax Board, the taxpayer shall provide
29 a copy of the certification to the Franchise Tax Board.

30 (e) In the case where the credit allowed by this section exceeds
31 the "tax," the excess may be carried over to reduce the "tax" in
32 the following year, and for the six succeeding years if necessary,
33 until the credit has been exhausted.

34 (f) To the extent that data are available, the Franchise Tax Board
35 shall report ~~annually~~ to the Legislature *on or before December 1,*
36 *2014, and each December 1 thereafter until the inoperative date*
37 *specified in subdivision (g),* regarding the utilization of the credit
38 authorized by this section.

(g) (1) A report to be submitted pursuant to subdivision (f) shall be submitted in compliance with Section 9795 of the Government Code.

(2) The requirement for submitting a report imposed under subdivision (f) is inoperative on January 1, 2016, pursuant to Section 10231.5 of the Government Code.

(h) This section shall remain in effect only until December 1, 2017, and as of that date is repealed. However, any unused credit may continue to be carried forward, as provided in subdivision (e).

SEC. 5. Chapter 14.5 (commencing with Section 18995) is added to Part 6 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 14.5. THE STATE
EMERGENCY FOOD ASSISTANCE PROGRAM

18995. (a) On and after January 1, 2012, the State Department of Social Services shall establish and administer the State Emergency Food Assistance Program (SEFAP). The SEFAP shall provide emergency food and funding for the provision of emergency food to food bank networks and other organizations whose ongoing primary function is to facilitate the distribution of food to low-income households.

(b) The State Emergency Food Assistance Program Account is hereby established in the Emergency Food Assistance Program Fund established pursuant to Section 18852 of the Revenue and Taxation Code, and may receive General Fund moneys, federal funds, and voluntary donations or contributions. All moneys received by the State Emergency Food Assistance Program Account shall, upon appropriation by the Legislature, be allocated to the State Department of Social Services for allocation to the SEFAP and shall be used for the purchase, storage, and transportation of food grown or produced in California. Moneys in the fund shall not be used for the administrative costs of the State Department of Social Services' Services.